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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,142	02/27/2004	Bruce Elliot Kramer	SOAP1	4632

7590 07/31/2006

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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/787,142

Applicant(s)

KRAMER ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 26, 28-51 and 53-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 26, 28-51, 53-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. Claims 24-25 rejected under 35 U.S.C. 102(b) as being anticipated by Joshi (4,017,574) is withdrawn in view of applicant's amendment.
2. Claims 24-25 rejected under 35 U.S.C. 102(e) as being anticipated by Sonnenberg et al (6,673,756) is withdrawn in view of applicant's amendment.
3. Claims 24, 26, 28-30, 34, 38-51, 53-54 rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi (4,017,574) is withdrawn in view of applicant's amendment.

Claims 24, 26, 28-51, 53-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnenberg et al (6,673,756).

Sonnenberg et al disclose a multiphase soap comprising two or more phases and each phase may be opaque and comprise different color or dye (col. 21, lines 60-64; col. 26, lines 30-35 and claims 1-5). Sonnenberg et al further teach that said multiphase soap bar comprises an antibacterial components (col. 15, lines 14-42) and further teach that said bar comprises an object for advertising purposes such as a toy of gold or similar materials (col. 21, lines 50-col. 22, line 16).

Sonnenberg et al do not teach with sufficient specificity each of the colors in specific layers.

It would have been obvious to one of ordinary skill in the art to disperse the various colors in a specific layers as claimed because Sonnenberg et al teach a multiphase soap bar having two or more phases in different colors (col. 26, lines 30-35). Further, specific colors or layers have been held that matters relating to ornamentation or aesthetic design changes which have no mechanical function cannot be relied upon

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to patentably distinguish the claimed invention from the prior art *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Response to Arguments

4. Applicant's arguments filed 5-24-2006 have been fully considered but they are not persuasive.

Applicant argues that the prior art soap bars do not motivate a child to wash and improve their hygiene and therefore the claims are a functional difference from the prior art of record.

The examiner contends and respectfully disagrees because the prior art of record teaches bars with a variety of colors and layers and one skilled in the art would be motivated to assemble the layers and colors as claimed, in the absence a showing to the contrary. With respect to motivating a child to wash, the examiner contends that this would be an inherent property of the soap bars because as they teach layered soap bars with a plurality of colors in a variety of arrangements, wherein one skilled in the art would expect said soap bars to motivated a child to wash or bathe. With respect to improving a chilled hygiene, the examiner contends that the soap bars have cleansing phases, which would clean and improve the hygiene of a child if used as a cleansing personal soap bar. Further, the courts held that reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) (*In re Dillon*, 919 F.2d 688, 16

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USPQ2d 1897 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991) "it is not necessary in order to establish a prima facie case of obviousness . . . that there be a suggestion or expectation from the prior art that the claimed [invention] will have the same or a similar utility as one newly discovered by applicant," and concluded that here a prima facie case was established because "[t]he art provided the motivation to make the claimed compositions in the expectation that they would have similar properties."

Applicant argues that the prior art does not teach or suggest a soap bar comprised of layers and colors.

The examiner contends that Sonnenberg et al specifically teach that said bars comprise a plurality of phases (or layers) and a varied combination of colors (col. 21, lines 60-64; col. 26, lines 30-35 and claims 1-5). Therefore, Sonnenberg et al specifically suggest different colored phases as suggested by the claimed invention. With respect the different color, the examiner contends that said color(s) are within the level of artisan having ordinary skill and would have been obvious to select specific colors for commercial purposes. Again, specific colors or layers have been held that matters relating to ornamentation or aesthetic design changes which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art In re Seid , 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

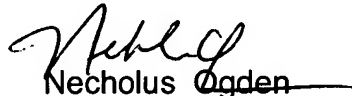
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Necholas Ogden
Primary Examiner
Art Unit 1751

No
7-25-2006